

RE: Pharmacy Assessment– What is taxable?

The following is intended to clarify what is taxable, resulting from questions that were posed to OVHA regarding the application of 33 V.S.A. § 1955b.

This pharmacy assessment provision applies to a “pharmacy” that is “ a Vermont drug outlet licensed by the Vermont state board of pharmacy pursuant to chapter 36 of Title 26 in which prescription drugs are sold at retail.” The Legislature previously defined a “drug outlet” at 26 V.S.A. § 2022(7) to include “all pharmacies, nursing homes, convalescent homes, extended care facilities, drug abuse treatment centers, penal institutions, family planning clinics, retail stores, hospitals, wholesalers, manufacturers, any authorized treatment centers and mail order vendors which are engaged in dispensing, delivery, or distribution of prescription drugs.” While the definitions do not include “retail,” “wholesale distribution” is described, in relevant part, as the “distribution of prescription drugs to persons other than a consumer or patient.” 26 V.S.A. § 2022 (17). The definitions define “prescription drug” to mean any human drug... to be dispensed only by a prescription.” 26 V.S.A. § 2022(16).

Section 1955b explicitly applies to the total number of paid original and refilled prescriptions.

As a general rule, an original prescription or refill would be subject to the Vermont provider tax, when, if the patient were Medicaid-eligible, the transaction would qualify for a dispensing fee payment by Vermont Medicaid. This would qualify the transaction as “sold at retail” in our view.

This assessment will be applied to all prescriptions and all refills (private insurance, self-pay, Medicaid, etc.) that meet the above criteria, and not only to Medicaid transactions.

Specific examples of a transaction that would meet the “sold at retail” test are:

- An over-the-counter transaction.
- A prescription filled, or refilled, for a nursing facility patient.

Specific examples of transactions that would not meet the “sold at retail” test are:

- Prescriptions dispensed to hospital inpatients.
- Prescriptions filled or refilled under the 340(b) pharmacy program for FQHC’s.
- Drugs sold to providers for office use.
- Drugs sold to owners for animal use.
- Prescriptions that are dispensed to patients at no charge to the patient or the patient’s insurer.